

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hubert T. McGovern, et al

Serial No.: 09/923,288

Examiner: Jori Schiffman

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Group Art Unit: 3679

For: Deck Screws Suitable for Use with Composite Lumber

Commissioner for Patents  
United States Patent and Trademark Office  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**DECLARATION UNDER 37 C.F.R. §1.132 OF COMMERCIAL SUCCESS  
AND UNEXPECTED RESULTS**

I, HUBERT T. MCGOVERN, hereby declare and state that:

1. I am Vice President and General Manager of Olympic Manufacturing Group, Inc., ("OMG"), 153 Bowles Road, Agawam, Massachusetts 01001-0508, assignee of the above-captioned application, and a company which is primarily dedicated to the manufacture and marketing of high-quality fastener components and accessories to the construction and roofing industry. I am also an inventor of record with respect to the above-captioned application.

2. I am a graduate of Syracuse University with a Bachelor of Science degree in Engineering and have a Master's degree in Engineering from the University of Massachusetts.

3. I have been employed at OMG for over 19 years and have actively participated in the fastener industry. My responsibilities and experience have included the design, planning, development, production, and marketing of new fastening products. I have attended and participated in numerous tradeshow and demonstrations where fasteners, hardware, components, and accessories are displayed, exhibited, and promoted to the major participants in the fastener industry including, but not limited to, tradesmen, contractors, manufacturers, wholesalers, and retailers.

4. I have been employed at OMG as an engineer and as an executive with management responsibilities. As a further part of my management responsibilities, I have analyzed markets within the fastener industry to identify those markets into which OMG can likely expand.

5. For over 20 years, OMG has been involved in the design, testing, development, manufacturing, marketing, and distribution of high-quality fasteners and accessories.

6. As an engineer, Vice President and General Manager of OMG, I have extensive knowledge and experience with regard to fasteners, associated accessories, and the markets pertaining to such products and accessories. I believe that based on my knowledge and my experience with regard to, at least, the above mentioned design, planning, development, manufacture, and marketing, as well as my attendance and active participation at major industry trade shows and demonstrations, and based on my knowledge of fasteners through my interactions with contractors, wholesalers, and retailers, I have ample qualifications to render an objective, credible and reliable opinion on the commercial success and the unexpected results of deck screws suitable for use with composite lumber.

7. The above-captioned patent application, of which I am an inventor of record, describes and claims the inventive concept for deck screws suitable for use with

composite lumber. The inventive concept includes at least a shaft having a cross-sectional area along the upper cylindrical region which is greater than the cross-sectional area of the shaft along the cylindrical lower region. In addition to the cross-sectional area along the upper cylindrical region, which is greater than the cross-sectional area of the shaft along the cylindrical lower region, the deck screw suitable for use with composite lumber includes at least a head provided with a top surface having an opening to receive a tool and a bottom surface having a v-shaped undercut having a conical surface in the undercut that connects the lip with a conical underside of the head, and/or a thread pattern of the lower region which is symmetrical, and/or a gimlet tip having an included angle from about 20° to about 30° and/or at least twice as many threads per unit length in the upper region as there are threads per unit length in the lower region, and/or a crown that extends around the perimeter of the head and extends beyond the lower surface of the head thereby defining an open volume between the lower edge of the crown and the shaft of the screw, and/or a crown that extends around the perimeter of the head, wherein the crown extends beyond the lower surface of the head, forming a recessed region between the lower edge of the crown and the shaft of the screw; and/or a bottom surface having a v-shaped undercut.

8. OMG has manufactured and marketed a deck screw for composite lumber under the FastenMaster and TrapEase trademarks ("TrapEase screw"). A representative depiction of the TrapEase screw is shown in Exhibit A. The depicted TrapEase screw includes a shaft having a cross-sectional area along the upper cylindrical region, which is greater than the cross-sectional area of the shaft along the cylindrical lower region. The depicted TrapEase screw in addition to having a cross-sectional area along the upper cylindrical region, which is greater than the cross-sectional area of the shaft along the cylindrical lower region includes at least a head provided with a top surface having an opening to receive a tool and a bottom surface having a v-shaped undercut having a conical surface in the undercut that connects the lip with a conical underside of the head, and/or a thread pattern of the lower region which is symmetrical, and/or a gimlet tip having an included angle from about 20° to about 30° and/or at least twice as many threads per unit length in the upper region as

there are threads per unit length in the lower region, and/or a crown that extends around the perimeter of the head and extends beyond the lower surface of the head thereby defining an open volume between the lower edge of the crown and the shaft of the screw, and/or a crown that extends around the perimeter of the head, wherein the crown extends beyond the lower surface of the head, forming a recessed region between the lower edge of the crown and the shaft of the screw; and/or a bottom surface having a v-shaped undercut.

9. In 2002, the number of TrapEase screws sold by OMG was in excess of One Hundred Thirty Four million (134,000,000) pieces and the gross proceeds from such sales exceeded Five Million (\$5,000,000.00) Dollars. In 2003, the number of TrapEase screws sold by OMG was in excess of Two Hundred Seventy Million (270,000,000) pieces and the gross proceeds from such sales exceeded Nine Million (\$9,000,000.00) Dollars. In 2004, the number of TrapEase screws sold by OMG, to date, exceeds Two Hundred Eighty Million and the 2004 sales proceeds are forecasted to exceed Ten Million (\$10,000,000.00) Dollars. The sales growth figures are substantial for the introduction of any screw-type fastener. They approximate 60% of the market for composite wood deck screws.

10. I am aware and include herewith as Exhibit B, a copy of a portion of the May 26, 2003, Volume 13, No. 10 issue of the "Home Improvement Executive" publication. This publication included a survey which assessed the perception within the home center chain and hardware co-op community as to the brands that this community felt was driving their business. The survey as contained within the publication included the OMG FastenMaster/TrapEase products, (TrapEase screw). The TrapEase screw includes the inventive concept of, at least, a shaft having a cross-sectional area along the upper cylindrical region, which is greater than the cross-sectional area of the shaft along the cylindrical lower region. In addition to the cross-sectional area along the upper cylindrical region, which is greater than the cross-sectional area of the shaft along the cylindrical lower region, the TrapEase screw includes at least a head provided with a top surface having an opening to receive a tool

and a bottom surface having a v-shaped undercut having a conical surface in the undercut that connects the lip with a conical underside of the head, and/or a thread pattern of the lower region which is symmetrical, and/or a gimlet tip having an included angle from about 20° to about 30° and/or at least twice as many threads per unit length in the upper region as there are threads per unit length in the lower region, and/or a crown that extends around the perimeter of the head and extends beyond the lower surface of the head thereby defining an open volume between the lower edge of the crown and the shaft of the screw, and/or a crown that extends around the perimeter of the head, wherein the crown extends beyond the lower surface of the head, forming a recessed region between the lower edge of the crown and the shaft of the screw; and/or a bottom surface having a v-shaped undercut. It is my objective opinion based on the sales figures and the selective demand for the TrapEase screw, as evidenced by, at least, the "Home Improvement Executive" publication that the TrapEase screw has been a commercial success.

11. I attribute the commercial success of the TrapEase screw suitable for use with composite lumber substantially to the fastener having a shaft that includes a cross-sectional area along the upper cylindrical region, which is greater than the cross-sectional area of the shaft along the cylindrical lower region. In addition to the shaft having a cross-sectional area along the upper cylindrical region, which is greater than the cross-sectional area of the shaft along the cylindrical lower region, the fastener includes at least a head provided with a top surface having an opening to receive a tool and a bottom surface having a v-shaped undercut having a conical surface in the undercut that connects the lip with a conical underside of the head, and/or a thread pattern of the lower region which is symmetrical, and/or a gimlet tip having an included angle from about 20° to about 30° and/or at least twice as many threads per unit length in the upper region as there are threads per unit length in the lower region, and/or a crown that extends around the perimeter of the head and extends beyond the lower surface of the head thereby defining an open volume between the lower edge of the crown and the shaft of the screw, and/or a crown that extends around the perimeter of the head, wherein the crown extends beyond the lower surface of the head, forming a

recessed region between the lower edge of the crown and the shaft of the screw; and/or a bottom surface having a v-shaped undercut.

12. The growth in sales and market share demonstrate that the superior performance of the TrapEase screw for use with composite lumber has overcome the tendency among users, contractors, manufacturers, wholesalers, and retailers to rely on the traditional pre-existing screws for composite lumber applications.

13. I am aware and include herewith as Exhibit C a copy of a FastenMaster TrapEase marketing publication. This publication includes a comparative photograph of a "Standard Deck Screw" and a TrapEase screw. The TrapEase screw shown in the photograph includes a shaft having a cross-sectional area along the upper cylindrical region, which is greater than the cross-sectional area of the shaft along the cylindrical lower region. In addition to the shaft having a cross-sectional area along the upper cylindrical region, which is greater than the cross-sectional area of the shaft along the cylindrical lower region, the TrapEase screw includes at least a head provided with a top surface having an opening to receive a tool and a bottom surface having a v-shaped undercut having a conical surface in the undercut that connects the lip with a conical underside of the head, and/or a thread pattern of the lower region which is symmetrical, and/or a gimlet tip having an included angle from about 20° to about 30° and/or at least twice as many threads per unit length in the upper region as there are threads per unit length in the lower region, and/or a crown that extends around the perimeter of the head and extends beyond the lower surface of the head thereby defining an open volume between the lower edge of the crown and the shaft of the screw, and/or a crown that extends around the perimeter of the head, wherein the crown extends beyond the lower surface of the head, forming a recessed region between the lower edge of the crown and the shaft of the screw; and/or a bottom surface having a v-shaped undercut. Exhibit C illustrates the unexpected feature wherein the claimed screw eliminates the conventional mushroom or volcano effect. It is my objective opinion that the favorable result depicted in the comparative photograph was unexpected with what was known in the fastening industry at the time of the invention.

14. I attribute the unexpected result with regard to the TrapEase screw suitable for use with composite lumber substantially to the fastener having, among other things, the inventive concept of a shaft having a cross-sectional area along the upper cylindrical region, which is greater than the cross-sectional area of the shaft along the cylindrical lower region. In addition to the shaft having a cross-sectional area along the upper cylindrical region, which is greater than the cross-sectional area of the shaft along the cylindrical lower region, the fastener includes at least a head provided with a top surface having an opening to receive a tool and a bottom surface having a v-shaped undercut having a conical surface in the undercut that connects the lip with a conical underside of the head, and/or a thread pattern of the lower region which is symmetrical, and/or a gimlet tip having an included angle from about 20° to about 30° and/or at least twice as many threads per unit length in the upper region as there are threads per unit length in the lower region, and/or a crown that extends around the perimeter of the head and extends beyond the lower surface of the head thereby defining an open volume between the lower edge of the crown and the shaft of the screw, and/or a crown that extends around the perimeter of the head, wherein the crown extends beyond the lower surface of the head, forming a recessed region between the lower edge of the crown and the shaft of the screw; and/or a bottom surface having a v-shaped undercut. Because of the, at least, above recited features, the TrapEase screw exhibits markedly superior results when compared to fasteners not having these features in terms of elimination of the volcano or mushroom effect.

15. I consider the TrapEase screw as claimed in the above-captioned application to be a significant technical advance over prior art devices. The commercial success and unexpected performance of the TrapEase screw for use with composite lumber embodying features of the invention as claimed in, at least, independent claims 6, 8, 10, 23, 45, 52, 59, and 94, confirm that the invention is new, useful, and non-obvious in view of the state of the art as of August 6, 2001, which is the filing date of the aforementioned application.

I hereby declare that all aforesaid statements made above are true and accurate to the best of my knowledge and belief and that any opinions are true also to the best of my knowledge and belief, and that any willful false statements will jeopardize the validity of any patent that may issue from the above-captioned application and may subject me to prosecution under Federal law.

Respectfully submitted,

By: Hubert T. McGovern  
Hubert T. McGovern

Date: 12/16/04

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